question is "where is the exact location of that piece of land?"

Unlike real property not held under title, real property held under title by a Dayak may be disposed of by him without restriction. For authority I refer to *Sat anak Akum & Another* v. *Randong anak Charareng* [1] where Lascelles J. in his judgment at page 108 said this:—

"No one has argued that a Dayak may not dispose of his own property, real or personal, during his lifetime. By this I mean property he has acquired himself during his lifetime and which is not restricted in any way. A Dayak, for example, who is the registered owner of a rubber garden with an unrestricted title can certainly dispose of it during his lifetime without any hindrance by adat and I see no reason whatsoever why he should not do so by will, even if he does leave it to someone who would not on intestacy inherit it by customary law."

In the case of untitled property the position is explained in the *Tusun Tunggu* which applies to the Dayaks of the Third, Fourth and Fifth Divisions. The *Tusun Tunggu* was the result of an attempt to codify the *adats* which prevail among the Dayaks of these Divisions. At page 22 of the *Tusun Tunggu* in respect of the Third Division the following is recorded:—

"7. Theoretically all untitled land whether jungle or cleared for padi farming (Temuda) is the property of the Crown. The fact that Dayaks do clear a portion of virgin land for the site of their padi farms confers on them a restricted right of proprietorship over the land thus cleared. Once the jungle has been cleared it becomes 'temuda'. It is a recognised custom that 'temuda' is for the use of the original worker, his heirs and descendants. This is the only way Dayaks can acquire land other than by gift or inheritance.

In former days there were no restrictions on anyone felling jungle provided that he did not destroy valuable commercial trees such as gutta, jelutong and engkabang. But it is not so now. Since the introduction of the Forest and Erosion Ordinance no one is allowed to fell jungle without permission from the proper authority.

No Dayak is allowed to sell, purchase or lease (by way of demanding rent either in kind or in cash) untitled land. It would be an infringement of the right of the Crown if they did so, and they may be prosecuted in view of the fact that selling of untitled land is prevalent in this Division, and Dayaks seem to forget this custom.

There are no other ways in which Dayak can part with possession of untitled land other than by gift or on death. When a Dayak abandons his land 'temuda' and moves to another district he loses all his rights to it. The land that has been farmed by him reverts to the Crown (as legally it is Crown land) and it is usually set aside for the benefit of the general community or to help those who are otherwise lacking in land. In such a case the original owner has no right to prevent others from making use of the land and the user acquires the right."

It is not disputed that when a Dayak dies his property will be distributed according to the Dayak custom of inheritance. The rights of the beneficiaries are defined by customary law. But there is nothing to exempt Dayaks from the Administration of Estates Ordinance (Cap. 80) (The Laws of Sarawak 1948 Revised Edition).

In my judgment on the evidence I hold that plaintiff has not discharged the onus that the land known as Lot 386 is the same piece of land which was held by Tunjan under the O.T. In any event plaintiff has no claim against first defendant since he did not dispute the latter's title and did not allege fraud on the part of first defendant. In the exercise of my discretion I therefore decline to make the declaration asked for. Accordingly plaintiff's application for declaration against both defendants is refused and his claim for an order of revocation against second defendant is dismissed with costs to be taxed.

*Application refused.*

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## VICTORIA HOTEL v. HO SEE TECK

**[O.C.J. (Winslow J.) September 3, 1965]**

**[Singapore — Suit No. 1007 of 1965]**

*Landlord and Tenant — Licence — Irrevocable licence acquired after termination of partnership — Whether licence can be revoked.*

The plaintiffs carried on business as hoteliers. It appeared on the evidence that the proprietor of the plaintiff firm originally entered into a partnership with the defendant and another person to run the business of a bar and restaurant on the ground floor of the hotel. Subsequently the partnership was terminated and the defendant claimed that he was then given the exclusive right to run the restaurant business in consideration of a sum of $6,000 paid by him, for so long as the defendant could personally continue to run the said restaurant and for so long as the plaintiffs carried on their hotel business. The plaintiffs contended that the partnership was still in existence and they purported to revoke the licence granted to the partnership to run the joint business, by giving the defendant three days notice terminating the arrangements and requiring him to vacate the premises.

**Held:** (1) on the facts the partnership had been terminated and the defendant had obtained an irrevocable contractual licence to run the restaurant under an oral agreement intended to be binding and supported by consideration and which was in fact acted upon;

(2) therefore the plaintiff's claim to have possession of the premises must be dismissed.

*Cases referred to:—*

(1) *Thompson* v. *Park* [1944] 2 All E.R. 477.

(2) *Kerrison* v. *Smith* [1897] 2 Q.B. 455.

(3) *Winter Garden Theatre Ltd.* v. *Millenium Productions Ltd.* [1947] 2 All E.R. 331.

(4) *Millenium Productions Ltd.* v. *Winter Garden Theatre Ltd.* [1946] 1 All E.R. 678.

(5) *Errington* v. *Errington* [1952] 1 All E.R. 149.

CIVIL SUIT.

*T. C. Cheng* for the plaintiff.

*J. C. Chen* for the defendant.

**Winslow J.:** The plaintiffs are proprietors of Victoria Hotel which commenced business presumably as hoteliers at 87 Victoria Street on 4th September, 1956.

One Ho Soon Tye, the father of Ho Tat Teng (P.W.1), managed the business till his death in 1962. His son (P.W.1) who had been assisting the father previously in the business is at present the managing partner.

The business of a Bar and Restaurant was conducted as a joint venture on the ground floor of the said premises from the commencement of the business of this hotel by a number of partners with whom I need not concern myself here since they dissolved their partnership in or about February, 1959, when a new partnership comprising the defendant Ho See Teck (D.W.2) and Ho Koon Foo (P.W.2) took over the joint venture. There is no evidence of any written agreement embodying the terms on which this partnership operated and recourse must, therefore, be had only to the oral testimony of P.W.1 and P.W.2 and the defendant and such documents of account as were produced in support thereof.

P.W.1 admitted that he knew little of the terms of the oral arrangements between his father and the new partnership. In fact he took no part in these arrangements and has no personal knowledge of them apart from what his father told him. All he knows is that he used to collect a commission of ten per cent on the gross monthly takings of the bar and restaurant on behalf of the plaintiffs and that these arrangements continued until September, 1959 when further arrangements were negotiated between his father and the two partners, but his father did not tell him what these arrangements were. He says that he was informed about the new arrangements by the partners themselves. All he can say is that after September, 1959 he used to collect a commission of ten per cent of the gross monthly takings of the bar from P.W.2 and ten per cent of the gross monthly takings of the restaurant separately from the defendant since these two partners had "quarrelled" and it had been decided that one should take charge of the bar and the other, separately, of the restaurant.

On 10th May, 1965, P.W.2 had another difference of opinion with the defendant as a result of which he ceased to operate the bar.

Taking the view that the partnership was still in existence on that day and that there was no valid reason for continuing to recognise the ability of the partners to run the joint venture as a partnership, and since the business of the bar had stopped, P.W.1 decided to revoke the licence granted to the partnership to run the joint business. He accordingly gave three days' notice, through his solicitors on 21st May, 1965, to the defendant, terminating the arrangements and requiring him to vacate the premises.

The defendant claims that the partnership in question was dissolved in September, 1959 and that thereafter he entered into oral arrangements with the plaintiffs through the late Ho Soon Tye whereby he was given an exclusive personal right, distinct and separate from the partnership, to run the restaurant business, in consideration of a sum of $6,000 paid by the defendant to the said Ho Soon Tye, for so long as the defendant could personally continue to run the said restaurant and for so long as the plaintiffs continued to carry on their hotel business. In other words, he claims that he acquired an irrevocable, contractual licence to run the restaurant.

What I have to decide in this case is whether the partnership aforesaid was in fact dissolved in September, 1959 and, if so, whether the defendant acquired an irrevocable licence to run the restaurant as a separate business.

The evidence as I have already said consists mainly of the recollection of the witnesses of the various arrangements said to have been made with the late Ho Soon Tye. The evidence of P.W.1 contributes little to any proper understanding of these arrangements and is only useful to the extent that he confirms what both P.W.2 and the defendant say about separate collections of commissions made by P.W.1 from the bar as distinct from the restaurant. This I accept.

As for P.W.2's evidence, he was adamant that the partnership between him and the defendant had not been dissolved in September, 1959 and that, so far as he was concerned, the partnership continued thereafter and that it was only a matter of internal administration that he managed the bar and the defendant the restaurant. In the eyes of the world and of the plaintiffs the partnership continued. On this, it is pertinent to enquire why, if the partnership continued to exist after September, 1959, separate commissions were being paid to P.W.1.

The defendant on the other hand claims that the partnership was dissolved in September, 1959, and he is the only witness who has produced any documentary evidence relating to the accounts of the partnership business and, however inefficiently or vaguely the accounts may have been kept, this is the only documentary evidence before me of the affairs of the partnership business and I see no reason for rejecting the story told by the defendant in favour of the vague oral testimony of the plaintiffs' witnesses. It is true that the plaintiffs' witnesses aver that drafts of written agreements were drawn up from time to time for the defendant's signature and that the latter refused to sign them. I see no reason why I should hold this refusal to sign agreements as a ground for necessarily drawing any adverse conclusion with regard to his evidence.

P.W.2 was a more alert and astute witness but this fact alone does not, in my view, convert him into a more credible witness, because it is common ground that he was the person responsible for the various changes which occurred in the history of the affairs of this hotel until he finally threw up the sponge on 10th May, 1965 when he refused to carry on the business of the bar. It was his refusal to carry on the business of the bar which "threw a spanner into the works", so to speak, and brought about a change in the situation prevailing on the ground floor of this hotel and has led to the present impasse.

The defendant struck me as being a more docile and a little less intelligent individual than P.W.2 and, perhaps because of this, a more cautious type of person.

On the evidence I am prepared to believe that he made a greater financial contribution to the business from its inception than P.W.2. P.W.2 used to find himself in some kind of financial plight which seems to have been the cause of the various changes in the arrangements for running the bar and restaurant. The defendant, on the other hand, clearly admits that he knows nothing about running a bar but that he considers himself quite an efficient proprietor of a restaurant which he has, all along, run with some degree of success.

Taking all things into consideration he was, in my opinion, a more truthful witness and he is supported by the accounts produced.

It was contended on behalf of the plaintiffs that the licence in this case, which was granted to the partnership, was revocable, that the partnership has never ceased to exist and that, by virtue of P.W.2's ceasing to run the business of the bar, the plaintiffs were justified in revoking the licence which was originally granted to the partnership. It was also contended that the burden of proving that the licence was irrevocable was on the defendant.

Mr. T. C. Cheng, counsel for the plaintiffs, relied mainly on the case of *Thompson* v. *Park* [1] which he said was authority for the proposition that a licensor has, at common law, the *power* to revoke the licence at any time even though he may have no *right* to revoke it before the expiration of the term agreed.

I entirely agree with this proposition of law which is cited in the judgment of Goddard L.J. from *Salmond* on Torts at page 479 of this report. But even an authority of the eminence of the late Sir John Salmond could never have intended this proposition to apply in the case of an irrevocable licence.

In *Thompson* v. *Park, supra,* there was no question of an irrevocable licence. In fact the agreement on which the licence was founded provided for the duration thereof. All that this case decided was that once such a licence has been revoked by the exercise of a lawful power any re-entry by the licensee would amount to a trespass.

Again in *Kerrison* v. *Smith,*[2] it was held, where the plaintiff had a licence to post bills on the defendant's wall on payment of £2-10s. a year, that, though the licence was revocable, an action for breach of contract was maintainable and that the revocation of the licence would not put an end to the whole case.

Both counsel referred to the well-known case of *Winter Garden Theatre Ltd.* v. *Millenium Productions Ltd.*[3] where the House of Lords reversed the decision of the Court of Appeal.[4] It was pointed out, however, by counsel for the defendant that, although the decision was reversed on a true construction of the terms of the contract in question, the principles laid down by the Court of Appeal and, in particular by Lord Greene M.R. were upheld. As Lord Uthwatt said at page 343—

> "I merely confess my present inability to see any answer to the propositions of law stated by Lord Greene M.R. in his judgment in the case under appeal. The settled practice of the courts of equity is to do what they can by an injunction to preserve the sanctity of a bargain. To my mind, as at present advised, a licensee who has refused to accept the wrongful repudiation of the bargain which is involved in an unauthorised revocation of the licence is as much entitled to the protection of an injunction as a licensee who has not received any notice of revocation, and, if the remedy of injunction is properly available in the latter case against unauthorised interference by the licensor, it is also available in the former case. In a court of equity, wrongful acts are no passport to favour."

What Lord Greene M.R. said on the subject, at page 680 of the report cited above, is as follows:—

> ". . . it may, I think, be helpful to state, in as few sentences as I can, certain propositions which appear to govern part of the subject-matter with which we are concerned. Counsel for the respondents put in the forefront of his argument a proposition of this nature. There is a thing called a licence, which is something which, so to speak, has a separate existence, distinct from the contract which creates it; and there is a rule of law governing that particular thing which says that a licence is determinable at will. That seems to me to be putting the matter on the wrong footing. A licence created by a contract is not an interest. It creates a contractual right to do certain things which otherwise would be a trespass. It seems to me that, in considering the nature of such a licence and the mutual rights and obligations which arise under it, the first thing to do is to construe the contract according to ordinary principles. There is the question whether or not the particular licence is revocable at all and, if so, whether by both parties or by only one. There is the question whether it is revocable immediately or only after the giving of some notice. Those are questions of construction of the contract. It seems to me quite inadmissible to say that the question whether a licence is revocable at all can be, so to speak, segregated and treated by itself, leaving only the other questions to be decided by reference to the true construction of the contract. As I understand

the law, rightly or wrongly, the answers to all these questions must depend on the terms of the contract when properly construed in the light of any relevant and admissible circumstances."

Counsel for the plaintiffs read the following passage from Lord Porter's judgment in the House of Lords at page 338:—

"It is one thing to say that a limited and temporal licence remains in force until the particular object for which it is given is fulfilled or the definite period of time has elapsed; it is quite a different matter to allege that a licence once given in general terms can never be terminated. To my mind the whole historical development of the law is against such a contention. . . .

The respondents, however, relied in particular on *Llanelly Ry. & Docks Co.* v. *London & North Western Ry. Co.* Undoubtedly, in that case, running powers over their line given by one railway company to another were held to be irrevocable, but they formed part of a general agreement, under which a large sum was lent, and formed part of the consideration for the loan. In any case running powers are in a class by themselves, involving special arrangements, preparations and expenditure, which may well influence the construction of an agreement under which they are granted. The actual decision was that all the provisions of the agreement showed that it was a permanent and not a terminable one. It is true that Lord Selborne said that:

> . . . an agreement *de futuro*, extending over a tract of time which, on the face of the instrument, is indefinite and unlimited, must (in general) throw upon anyone alleging that it is not perpetual, the burden of proving that allegation, either from the nature of the subject, or from some rule of law applicable thereto.

Whether such a proposition is too widely stated, though in general it may be true, is not a matter which, in my opinion, it is material to decide. The other members of the House gave their decision upon the construction of the document itself, and, in any case, qualified it by bringing to the inquiry a consideration of the nature of the subject-matter involved.

The rule of law applicable to the licence granted to the respondents in the present case is, I think, that *prima facie* licences are revocable. This was a licence to use a theatre and the particular circumstances are to be found in the terms of the document itself. Judging from the terms of the document alone, I should think it revocable. The licence is for the purpose of producing stage plays, concerts and ballets, and starts with two rights of option to retain the licence for six months each. These provisions are succeeded by an option of further continuing the licence. Speaking for myself, I should not, unless compelled, construe such a document as granting a perpetual licence."

It will be seen, therefore, that *prima facie* a licence is revocable but if it extends over a period of time which is indefinite and unlimited the burden is thrown upon the person alleging that it is impermanent or limited of proving that allegation.

Where there is a contractual licence for valuable consideration, as there was in the case before me, I have to construe the terms of the contract in question in order to decide whether the licence was intended to be irrevocable.

In *Errington* v. *Errington*,[5] an action by a widow against her son and daughter-in-law for possession of a house, which her late husband had left to her, failed on the ground that the occupation of the house by the son and daughter-in-law was not determinable on demand since they were entitled to remain in possession for so long as they paid certain instalments to a building society as they had promised the father they would.

It is noteworthy that this case is cited in *Halsbury's* Laws of England, 3rd Edition, Volume 23 at pages 431 and 505, for the proposition that a licensee holding under an irrevocable licence is entitled to continue in occupation for so long as he is not in breach of the condition of the licence. At page 431 *Halsbury* further states —

> "A gratuitous licence is revocable by notice at any time and is revoked by the death of either party or by an assignment of the land over which the licence is granted. A contractual licence may be revocable or irrevocable according to the express or implied terms of the contract between the parties, and may be assignable or not assignable according to the terms of the contract.
>
> To establish a contractual licence there must be a promise which is intended to be binding and is either supported by consideration, or is intended to be acted on and is in fact acted on."

Having set out the principles of law by which this case must be decided, I now return to the facts herein for a true construction of the terms of the licence in question with a view to deciding whether the defendant has acquired a contractual licence to run the business of the restaurant at this hotel for so long as it continues to exist as a hotel and for so long as he is ready and willing to run his restaurant business and pay the plaintiffs the promised commission.

It is true that Ho Koon Foo (P.W.2) said in evidence that the partnership continued to exist after September, 1959 and that it was orally agreed that he should manage the bar and the defendant the restaurant for three years in the first instance, and that thereafter he would take over the restaurant and the defendant the bar. He further said that at the end of the three years, i.e. in 1962, the defendant refused to give up the restaurant and that finally in May, 1965, "after another three years" he gave up the bar because the defendant refused to give up the restaurant. It is pertinent to observe that the three years would be up only in September, 1965.

As I have said earlier, I prefer the defendant's version. In fact P.W.2 now appears to be strongly partisan in favour of the plaintiffs although for some reason best known to himself, he was not above hiding the true financial position from the late Ho Soon Tye.

With regard to Exhibit D1 which is one of the account books produced by the defendant, he agreed that Ho Koon Aik, a relation of his, made the entries therein on the instructions of the

defendant and himself, but he continued to say that these accounts are wrong and that they do not show the true position because they were hiding the position from the late Ho Soon Tye. When asked why they should hide the position from the late Ho Soon Tye, he feigned a loss of memory.

At one stage after having previously taken the stand that the partnership still exists, he agreed with the defendant that in September, 1959 the partnership came to an end and that the bar and the restaurant kept separate accounts and that each bore its own respective gains or losses without recourse to the other.

In view of the spurious nature of his conduct as borne out by these revelations, and the contradictions in his evidence, little reliance can be placed on him.

I see no reason why I should not accept the defendant's story that he left the sum of $6,000 which was the amount due to him on the dissolution of the partnership in September, 1959 with the plaintiffs in order that he should be left in peace to carry on his restaurant business for so long as the hotel continued to exist and for so long as he was himself ready and willing to run the business on the usual undertaking to pay the plaintiffs ten per cent commission on his gross monthly takings.

In view of my finding that the partnership was dissolved in September, 1959 I need not concern myself with any dissolution which must have occurred at least in 1962 by virtue of the death of Ho Soon Tye who was himself a partner as the proprietor of Giam Teck Co. in March, 1959.

I have, therefore, come to the conclusion that the defendant was given an irrevocable licence to run the restaurant under an oral contract intended to be binding and supported by consideration and which was in fact acted upon.

The plaintiffs' claim is accordingly dismissed with costs and the defendant's counterclaim succeeds with costs.

*Claim dismissed.*

*Counterclaim allowed.*

Solicitors: *Cheng & Co.; Laycock & Ong.*

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## YAP PHAN KOOI & ANOR. v. NIBLOCK & ORS.

**[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) September 6, 1965]**

**[K.L. — Federal Court Civil Appeal No. 6 of 1965]**

*Companies — Insurance company — Winding up — Right of liquidators to determine validity of claims — Life Assurance Act, 1961 — Life Assurance Companies (Compulsory Liquidation) Act, 1962, s. 5(1).*

The appellants by way of summons in chambers applied for the determination of the following questions: (a) whether the liquidators should wind up the affairs of the company as in an ordinary voluntary winding up and/or whether the provisions of the Life Assurance Company (Compulsory Liquidation) Act, 1962, apply to the said winding up; (b) whether policy holders of the company whose policies had lapsed before the coming into operation of the Life Assurance Act, 1961, should still be regarded as creditors of the company; (c) on what basis should those persons whose policies did not lapse on October 15, 1961, be paid; and (d) how should the validity of the claims received by the liquidators be ascertained and whether some representatives of the contributories or the creditors or some other independent person should be associated in the inspection and determination of the validity of such claims. The trial judge held that (a) the provisions of the Life Assurance (Compulsory Liquidation) Act, 1962, applied to the winding up of an insurance company; (b) policy holders of the company whose policies had lapsed before the coming into operation of the Act were not creditors of the company; (c) those persons whose policies did not lapse on the 15th day of October, 1961, were to be paid for an amount equal to the aggregate of the premiums paid and claimed by them under the policies; and (d) the validity of claims received by the liquidators were to be ascertained by the liquidators alone. He also ordered the costs of the liquidators to be paid by the applicants. On appeal it was contended that some representative of the contributories or some other independent person should be associated with the liquidators in the inspection and determination of the validity of each claim. The appellants also appealed against the order for costs.

**Held:** (1) under section 5(1) of the Life Assurance Companies (Compulsory Liquidation) Act, 1964, only the liquidators could ascertain the validity of claims received by them;

(2) the liquidators appointed by the court under the Act are officers of the court and as such should maintain an even balance between all persons whose interests are involved in the winding up; they are not appointees or agents of the competent authority and are not obliged to take directions from the competent authority nor to act on any direction from the competent authority and therefore the appeal as far as the order for costs was concerned should be allowed and the costs of all parties should be taxed and paid out of the assets of the company.

FEDERAL COURT.

*N. Sharma* for the appellants.

*R. H. V. Rintoul* for the respondents.

**Wee Chong Jin C.J. (Singapore):** This is an appeal against an order made by Gill J. on an application by the appellants, Yap Phan Kooi and Saw Yew Bee made by way of summons in chambers for the determination of the following questions arising in the winding-up of the Fair Insurance Company Limited (hereinafter referred to as "the company") :—

1. Whether the liquidators should wind up the affairs of the company as in an ordinary voluntary winding up and/or whether the provisions of the Life Assurance Company (Compulsory Liquidation) Act 1962 apply to the said winding up.

2. Whether policy holders of the company whose policies had lapsed before the coming into operation of the Life Assurance Act 1961 should still be regarded as creditors of the company.

3. On what basis should those persons whose policies